IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 26 of 2002

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NATIONAL INSURANCE CO.LTD.

Versus

NILABEN MUKESHBHAI SURTI

Appearance:

MS MEGHA JANI for Appellant

MR MTM HAKIM for Respondents-claimants

CORAM : MR.JUSTICE Y.B.BHATT

and

MR.JUSTICE M.H.KADRI

Date of decision: 18/01/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. Heard the learned counsel for the appellant and learned counsel for the respondents-original claimants (appearing by caveat). Appeal admitted. Mr. MTM Hakim appears for the respondents-original claimants and waives service of notice in the appeal.

2. On a joint request of learned counsel, the appeal is taken up for hearing today.

3. This is an appeal under section 173 of the Motor Vehicles Act, 1988, challenging the judgement and award of the Motor Accident Claims Tribunal (Aux.), Vadodara, in Motor Accident Claim Petition No.316/94.

4. The present appeal filed by the Insurance Company is not confined merely to statutory grounds, but is also on merits and quantum of the award inasmuch as the Insurance Company has obtained an appropriate and legally sustainable order passed by the Tribunal under section 170 of the said Act.

5. We have heard the learned counsel for the respective parties on the merits of their rival contentions, and have also perused such evidentiary material on record, to which our attention has been drawn. As a result of this exercise and as a result of the hearing and discussion, a consensus has been arrived at between the learned counsel, whereby they agree that the interest as awarded by the Tribunal may not be payable on the entire amount of the compensation, but only on a part of the compensation awarded. The determination of this difference is left to the Court by the learned counsel.

6. Having applied our minds to this aspect of the matter and in the light of the evidentiary material on record and in the light of the submissions made by the respective counsel on this aspect, we hold and direct that the claimants would be entitled to interest at the rate of 9% per annum from the date of application till realisation, only on the amount of Rs.5,81,000/-, whereas the amount of compensation determined by the Tribunal at Rs.7,71,565/- is not disturbed. We hold and direct accordingly. It is clarified that the impugned award is modified only to the aforesaid extent and the rest of the award stands confirmed.

7. This appeal is, therefore, partly allowed with no order as to costs. Decree accordingly.

8. Learned counsel for the appellant Insurance Company states that the amount due and payable to the claimants by virtue of the present judgement and order shall be deposited with the Tribunal within six weeks from today. Direct service is permitted.

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